

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

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PFIZER INC., PFIZER LIMITED and )  
PFIZER IRELAND PHARMACEUTICALS, )  
Plaintiffs and ) Civil Action No. 2:10-cv-00128-RBS-FBS  
Counterclaim Defendants, )  
v. )  
TEVA PHARMACEUTICALS USA, INC., )  
Defendant and )  
Counterclaim Plaintiff. )  
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**DECLARATION OF JOSHUA A. WHITEHILL  
IN SUPPORT OF TEVA'S MEMORANDUM IN SUPPORT OF ITS MOTION  
FOR LEAVE TO FILE AN AMENDED ANSWER AND COUNTERCLAIM**

I, Joshua A. Whitehill, declare, under penalty of perjury as follows:

1. I am an attorney at law, a member of the bar of the State of New York and an associate at the law firm of Goodwin Procter LLP. I have been admitted *pro hac vice* by the United States District Court for the Eastern District of Virginia for the purpose of participating in this action as an attorney for Defendant and Counterclaim Plaintiff Teva Pharmaceuticals USA, Inc. ("Teva"). As such, I have personal knowledge of the facts herein. I make this declaration in support of Teva's November 12, 2010 Memorandum in Support of Its Motion for Leave to File an Amended Answer and Counterclaim.

2. Attached hereto as Exhibit 1 is a true and correct copy of U.S. Patent No. 6,469,012 ("012 Patent").

3. Attached hereto as Exhibit 2 is a true and correct copy of Canadian Patent No. 2,163,446 (“446 Patent”).

4. Attached hereto as Exhibit 3 is a true and correct copy of the October 4, 2005 Affidavit of Peter Ellis, submitted in connection with *Pfizer Canada Inc. v. Apotex Inc.*, No. T-1314-05 (Can.) (“Ellis Aff.”).

5. Attached hereto as Exhibit 4 is a true and correct copy of PCT International Application No. PCT/EP94/01580, published as International Publication No. WO 94/28902 (“PCT ‘902”).

6. Attached hereto as Exhibit 5 is a true and correct copy of the June 5, 2002 Statement of Claim of Bayer AG and Bayer Inc., submitted in connection with *Bayer AG v. Pfizer Research & Development Co.*, No. T-865-02 (Can.) (“06/05/02 Bayer Statement of Claim”).

7. Attached hereto as Exhibit 6 is a true and correct copy of a November 14, 2002 letter from Andrew I. McIntosh of Bereskin & Parr to the Canadian Intellectual Patent Office (“11/14/02 Disclaimer Letter”).

8. Attached hereto as Exhibit 7 is a true and correct copy of the December 5, 2002 Reply of Bayer AG and Bayer Inc., submitted in connection with *Bayer AG v. Pfizer Research & Development Co.*, No. T-865-02 (Can.) (“12/05/02 Bayer Reply”).

9. Attached hereto as Exhibit 8 is a true and correct copy of the November 8, 2002 Disclaimer with Respect to Canadian Patent No. 2,163,446, submitted to the Canadian Intellectual Property Office in connection with Canadian Patent No. 2,163,446 (“Canadian Disclaimer”).

10. Attached hereto as Exhibit 9 is a true and correct copy of excerpts from a transcript of a January 16, 2007 deposition of Peter Ellis, taken in connection with *Pfizer Canada Inc. v. Apotex Inc.*, No. T-1314-05 (Can.) (“01/16/07 Ellis Depo.”).

11. Attached hereto as Exhibit 10 are true and correct copies of communications dated September 22, 2003, November 28, 2003, February 9, 2004 and March 16, 2004, between Andrew I. McIntosh of Bereskin & Parr and the Canadian Intellectual Patent Office, and concerning assignment of Canadian Patent No. 2,163,446 (“446 Patent Assignments”).

12. Attached hereto as Exhibit 11 is a true and correct copy of a June 12, 2002 letter from Steven B. Garland of Smart & Biggar to Watson McMunn of Pfizer Limited (“06/12/02 Letter”).

13. Attached hereto as Exhibit 12 is a true and correct copy of Anne Bowman & Alan H. Drummond, *Cyclic GMP Mediates Neurogenic Relaxation in the Bovine Retractor Penis Muscle*, 81 BRIT. J. PHARMACOL. 665 (1984) (“Bowman 1984”).

14. Attached hereto as Exhibit 13 is a true and correct copy of the February 10, 1998 Response After Final Rejection in the prosecution of U.S. Patent Application Serial No. 08/549,792, which issued as the ‘012 Patent (“02/10/98 Response”).

15. Attached hereto as Exhibit 14 is a true and correct copy of the February 6, 1998 First Declaration Under 37 CFR 1.132 of Stephen A. Ballard, in the prosecution of U.S. Patent Application Serial No. 08/549,792, which issued as the ‘012 Patent (“Ballard Decl.”).

16. Attached hereto as Exhibit 15 is a true and correct copy of the August 5, 1998 Brief for Appellants Under 37 C.F.R. §1.192 (a) in the prosecution of U.S. Patent Application Serial No. 08/549,792, which issued as the ‘012 Patent (“08/05/98 Brief for Appellants”).

17. Attached hereto as Exhibit 16 is a true and correct copy of the September 29, 2003 Director Initiated Order for Reexamination in the reexamination of the ‘012 Patent under Reexamination Control No. 90/006,617 (“09/29/03 Order for Reexamination”).

18. Attached hereto as Exhibit 17 is a true and correct copy of the May 10, 2010 Notice of Intent to Issue Ex Parte Reexamination Certificate in the reexamination of the ‘012 Patent under Reexamination Control Nos. 90/006,617, 90/006,886, 90/007,110 and 90/007,478 (“05/10/10 NIRC”).

19. Attached hereto as Exhibit 18 is a true and correct copy of the November 2, 2010 Ex Parte Reexamination Certificate for the ‘012 Patent (“11/02/10 Reexam Certificate”).

20. Attached hereto as Exhibit 19 is a true and correct copy of the March 29, 2005 First Declaration Under 37 CFR 1.132 of Peter Ellis in the reexamination of the ‘012 Patent under Reexamination Control Nos. 90/006,617, 90/006,886 and 90/007,110 (“03/29/05 Ellis Reexam Decl.”).

21. Attached hereto as Exhibit 20 is a true and correct copy of the March 29, 2005 Second Declaration Under 37 CFR 1.132 of Peter Ellis in the reexamination of the ‘012 Patent under Reexamination Control Nos. 90/006,617, 90/006,886, 90/007,110 and 90/007,478 (“11/11/05 Ellis Reexam Decl.”).

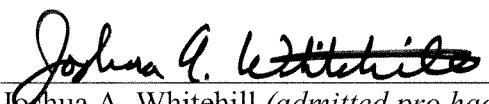
22. Attached hereto as Exhibit 21 is a true and correct copy of excerpts from the May 11, 2007 Memorandum of Fact and Law of the Respondent, Apotex Inc., submitted in

connection with *Pfizer Canada Inc. v. Apotex Inc.*, No. T-1314-05 (Can.) (“05/11/07 Apotex Memorandum”).

23. Attached hereto as Exhibit 22 is a true and correct copy of excerpts from the April 8, 2008 Memorandum of Fact and Law of the Appellant, Apotex Inc., submitted in connection with *Apotex Inc. v. Pfizer Canada Inc.*, No. A-484-07 (Can.) (“04/08/08 Apotex Memorandum”).

24. Attached hereto as Exhibit 23 is a true and correct copy of the March 30, 2010 Information Disclosure Statement in the reexamination of the ‘012 Patent under Reexamination Control Nos. 90/006,617, 90/006,886, 90/007,110 and 90/007,478 (“03/30/10 IDS”).

Dated: November 12, 2010

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of November, 2010, I will electronically file the foregoing Declaration of Joshua A. Whitehill in Support of Teva's Memorandum in Support of Its Motion for Leave to File an Amended Answer and Counterclaim with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following counsel of record:

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